Neutral Citation Number: [2025] EWHC 3 (Ch)

Case No: PT-2021-LIV-000033

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
IN LIVERPOOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Liverpool Civil & Family Courts
35 Vernon Street
Liverpool L2 2BX

Date: Wednesday, 8 January 2025

Before :

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

- -

Between :

SGL 1 Limited

Claimant

- and -

FSV Freeholders Limited & Others

Defendants

- -
- -

Mr Philip Byrne (instructed by **MSB Solicitors Limited**, Liverpool) for the **Claimant**
Mr Farhan Asghar (instructed by direct access) for the **Defendant**

Hearing date: Friday 18 October 2024
Date judgment circulated: 23 December 2024
Date judgment handed down: 8 January 2025

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Approved Judgment

This judgment was handed down remotely at 10.00am on Wednesday, 8 January 2025 by circulation to the parties or their representatives by e-mail, by uploading to CE-File, and by release to the National Archives.

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HIS HONOUR JUDGE HODGE KC

Landlord and tenant *– Leasehold enfranchisement – Tenant's right to acquire freehold – Landlord proposing to sell freehold interest in four blocks of flats – Landlord serving two offer notices on qualifying tenants (one covering one block and the other the remaining three blocks) – Whether blocks forming one, two, or more 'buildings' – Whether notices served on qualifying tenants valid –* Long Acre Securities Ltd v Karet *considered and applied –* Landlord and Tenant Act 1987*, ss. 5, 5A*

The following cases are referred to in the judgment:

FirstPort Property Services Ltd v Settlers Court RTM Company Ltd [2022] UKSC 1, [2022] 1 WLR 519
FSV Freeholders Ltd v SGL 1 Ltd [2022] EWHC 3336 (Ch), [2023] L & TR 18; on appeal [2023] EWCA Civ 1318, [2004] 1 WLR 1793; permission to appeal to the Supreme Court refused [2024] 1 WLR 2433 (Lord Briggs, Lord Burrows, Lady Simler JJSC)
Long Acre Securities Ltd v Karet [2004] EWHC 442 (Ch), [2005] Ch 61
Practice Direction (Citation of Authorities) [2001] 1 WLR 1001
York House (Chelsea) Ltd v Thompson [2019] EWHC 2203 (Ch), [2020] Ch 1

His Honour Judge Hodge KC:

Introduction

1. This reserved judgment addresses the sole issue that remains outstanding between the parties following the dismissal by the Court of Appeal (Peter Jackson, Asplin and Arnold LJJ) of an appeal by the first defendant, FSV Freeholders Limited (as the company authorised by the requisite majority of the qualifying tenants of the constituent flats as their nominee for the purposes of acquiring the freehold), from a decision of the Vice-Chancellor of the County Palatine of Lancaster (Fancourt J), who had set aside a decision of District Judge Lampkin declaring that Fox Street Village Limited ('**FSV**'), acting by its joint administrators, had complied with the provisions of section 5 of the Landlord and Tenant Act 1987 ('**the 1987 Act**') when disposing of the freehold title to blocks A to E, Fox Street Village, Liverpool L3 to the claimant, SGL I Limited. Reference should be made to *FSV Freeholders Ltd v SGL 1 Ltd* [2023] EWCA Civ 1318, [2004] 1 WLR 1793, on appeal from the decision of the Vice-Chancellor, [2022] EWHC 3336 (Ch), [2023] L & TR 18. The Supreme Court (Lord Briggs, Lord Burrows and Lady Simler JJSC) refused permission for a further appeal: see [2024] 1 WLR 2433.

2. By a Part 8 claim form, issued as long ago as 24 September 2021, the claimant sought to counter allegations made by the leaseholders that in selling the freehold title to four of the five blocks of apartments which constitute Fox Street Village, the joint administrators of FSV had failed to comply with the requirements of section 5 of the 1987 Act. It claimed a declaration that those provisions had been complied with, and that its acquisition of all five blocks had been lawful. Although various leaseholders were named as defendants in the claim form, it is the first defendant company that has taken the lead in defending the claim. I shall refer to it as '**the defendant**'. District Judge Lampkin treated the first hearing of the Part 8 claim as a disposal hearing. He summarily rejected all of the defences raised to the declaration sought by the claimant, holding that the requirements of the 1987 Act had been correctly observed, and that the response to the claim was *"totally without merit"*.

3. Fox Street Village is a residential development in Everton, to the north of Liverpool city centre. It lies to the south of Prince Edwin Street and to the east of Fox Street. It comprises (or should comprise) five blocks of residential accommodation. There is a helpful plan at page 356 of the trial bundle, with Google Maps aerial views at pages 467 and 470 (also pages 1136 and 1137). Blocks E and C are adjoining new-build constructions to the north of the site. To the south of them, and separated by an access road known as Back Beau Street, are Blocks A and B. Block A, to the west of the site, fronts on to Fox Street and is a residential conversion of the former Swainbanks warehouse building. Block B is a new-build construction and stands to the east of the site, and to the south of Block C. Block D is (or is intended to be) a larger residential new-build development to the south-west of the site, fronting on to Fox Street, and separated from Blocks A and B by Upper Beau Street. Following a major fire earlier this year, most of Block D has been demolished and it is presently something of a derelict eyesore: see a report in the *Liverpool Echo* for Wednesday 13 November 2024. There are a series of helpful external photographs of various parts of the site at pages 471-5 (also pages 1138-1142) and pages 982-993.

4. Section 5 notices had been served by the joint administrators' solicitors on the qualifying tenants in blocks A, B, C and E on 11 February 2020, specifying 27 April 2020 as the date for giving notice of acceptance of the offers to sell to the tenants. One set of notices was served in respect of block A, offering to sell the freehold for £350,000. Another set of notices was served for blocks B, C, and E together, offering to sell those freeholds for £1,050,000. It was common ground that Block D was not subject to the pre-emption provisions in Part 1 of the 1987 Act; and it was eventually sold to SGL1 for an additional £200,000. The claimant acquired the freeholds pursuant to a contract made with the joint administrators of FSV on 12 June 2020. This was completed by transfer on 25 November 2020, at a total price of £1.6 million. The defendant does not seek to contend that more than 50% of the qualifying tenants in the blocks identified in either of the two notices have accepted the offer to purchase within the time specified. The issues raised by the evidence served in response to the claim concern the validity of the section 5 notices.

5. The Vice-Chancellor allowed the defendant's appeal from the District Judge's decision, but only to the extent of directing that there should be the trial of the issue of whether the two sets of section 5 notices, one for block A and one for blocks B, C, and E together, were valid on the basis that they comprised two separate *'buildings'* for the purposes of Part 1 of the 1987 Act. He set aside the order made by the District Judge, and gave directions for the trial of the issues:

   (1) Whether Blocks A, B, C & E, 30 Fox Street, Liverpool, L3 3BQ form one, two, or more *'buildings'* within the meaning and for the purposes of Part I of the Landlord and Tenant Act 1987?

   (2) In consequence of the answer to (1) above, were the notices served on the qualifying tenants by FSV (acting by its administrators) pursuant to section 5 or 5A of the Landlord and Tenant Act 1987 valid notices?

6. Essentially, the appeal to the Court of Appeal raised a single ground of appeal, namely that the Vice-Chancellor had interpreted section 5 and 5A of the 1987 Act incorrectly when he had held that the section 5 notices did not need to contain the terms that the proposed purchaser had agreed in relation to the purchase of the freehold of the entire property, comprising all of blocks A to E. For the defendant, it was contended that Fancourt J had been wrong to decide that the notices were not invalid for that reason. The defendant contended that the notices should have stated that the total contractual sale price was £1.6 million, that a deposit of £80,000 was required, and that the terms of the sale were conditional upon obtaining a sealed court order authorising the sale at the agreed price. Although the Vice-Chancellor had restored the claim for the purposes of determining whether Blocks A, B, C and E formed one, two, or more *'buildings'*, within the meaning and for the purposes of Part 1 of the 1987 Act, it was assumed, for the purposes of the appeal, that FSV had been correct to treat block A as one building and blocks B, C and E together as another. Agreeing with the Vice-Chancellor, the Court of Appeal rejected the submission that, in a situation in which section 5 (3) required the transaction to be severed for the purposes of the section 5 offer notices, those notices must contain the principal terms of the disposal of the entire site, rather than the terms relating to the particular building which is the subject of the relevant notice.

7. Following the Supreme Court's refusal to give permission for a further appeal, this case was listed for trial before me in Liverpool on Friday 18 October 2024. The claimant is represented by Mr Philip Byrne (of counsel), instructed by MSB Solicitors Limited. The defendant is represented by Mr Farhan Asghar (also of counsel), instructed directly.

Relevant legislation

8. Part 1 of the 1987 Act is headed *"Tenants' Rights of First Refusal"*. It creates a right of first refusal for certain tenants of flats in buildings where the landlord intends to sell his reversionary interest. Section 1 (1) provides that a landlord shall not make a relevant disposal affecting any premises to which, at the time of the disposal, Part 1 of the 1987 Act applies unless he has complied with the requirements of section 5 for notices to be served on the qualifying tenants. Section 1 (2) provides that, with exceptions, Part 1 applies to premises if they consist of the whole or part of a building and contain two or more flats held by qualifying tenants.

9. Section 4 (1) describes what are relevant disposals affecting premises to which Part 1 applies. It states that they are the disposal by the landlord of any estate or interest (whether legal or equitable) in any such premises. There is an express exclusion in relation to the grant of any tenancy under which the demised premises consist of a single flat (whether with or without any *'appurtenant premises'*). By section 4 (4), *'appurtenant premises'*, in relation to any flat, means *"any yard, garden, outhouse or appurtenance (not being a common part of the building containing the flat) which belongs to, or is usually enjoyed with, the flat"*.

10. Section 5 (1) provides:

> *Where the landlord proposes to make a relevant disposal affecting premises to which this Part applies, he shall serve a notice under the section ('an offer notice') on the qualifying tenants of the flats contained in the premises…*

11. Section 5 (2) provides that an *'offer notice'* must comply with the requirements of whichever of sections 5A to 5D applies to the particular disposal. In a case such as the present, where the proposed disposal was a contract to be completed by conveyance, the offer notice is required to comply with section 5A.

12. Section 5 (3) provides as follows:

> *Where a landlord proposes to effect a transaction involving the disposal of an estate or interest in more than one building (whether or not involving the same estate or interest), he shall, for the purpose of complying with this section, sever the transaction so as to deal with each building separately.*

The term *'building'* is not defined in the 1987 Act.

13. Where an offer notice has been served, during the period specified in the notice, or such longer period as may be agreed with the requisite majority of the qualifying

tenants, the landlord shall not dispose of its interest in the premises other than to a person or persons nominated by the tenants: see section 6 (1) of the 1987 Act.

14. After the expiry of the period specified for the service of an acceptance notice or the appointment of a nominee, the landlord may dispose of the premises within a period of 12 months to a third party buyer as long as the deposit and the consideration are not less than those which were specified in the offer notice: see sections 7 (1) and (3) of the 1987 Act.

15. There is no dispute that the service of an offer notice which complies with (in this case) section 5A of the 1987 Act is mandatory, and that the failure to comply with the requirements of that section renders it a nullity. Where no offer notice is served at all, or where a disposal is made in contravention of sections 6 to 10 of the 1987 Act, the qualifying tenants may also serve an information notice on the landlord pursuant to section 11A.

16. If the landlord fails to comply with the requirements set out in Part 1 of the 1987 Act, and completes a sale to a third party, the qualifying tenants can require the third party to dispose of the premises which was the subject of the original disposal to their nominee on the terms upon which it was made, by way, for example, of the service of a valid notice pursuant to section 12B of the 1987 Act. Conversely, if the landlord complies with its obligations under Part 1 of the 1987 Act, the third party purchaser takes the interest in the land free from the qualifying tenants' rights of first refusal. Both section 11A and 12B notices have been served in the present case.

17. I should add that a landlord commits an offence if, without reasonable excuse, he makes a disposal without complying with section 5 of the 1987 Act in relation to the service of notices, or in contravention of any prohibition or restriction imposed in sections 6 to 10: see section 10A.

Long Acre Securities Ltd v Karet

18. The claimant in *Long Acre Securities Ltd v Karet* [2004] EWHC 442 (Ch), [2005] Ch 61 was the underlessor of a predominantly residential estate, comprising at least four separate structures, with appurtenant premises used in common by the residents. (In describing the estate, the deputy judge used the term *'structure'*, rather than '*building'*, to mean a single integrated structure separated from another structure by roadways, paths, gardens or other areas.) The claimant wished to dispose of part of its reversionary interest in the underlease by the grant of a sub-underlease at a public auction. The claimant served an offer notice on the qualifying tenants pursuant to sections 5 and 5B of the 1987 Act, specifying that the property to be disposed of was the entire residential estate; but it did not sever the transaction. The defendant, who was one of the qualifying tenants, challenged the validity of the notice on the ground that section 5 (3) required that the transaction be severed, so that the respective notices each identified a separate structure as the property to be disposed of. The claimant brought an application seeking, amongst other relief, a declaration that the notice satisfied the requirements of sections 5 and 5B of the Act and was valid. As explained at [1], the case raised the question of whether the word *'building'*, as used in the right of first refusal provisions in Part I of the 1987 Act 1987, could mean more than one building. As noted at [31], the substance of the claim was undefended, the defendant's concern being to avoid any order for costs being made against her.

19. Allowing the application, the deputy High Court judge (Mr Geoffrey Vos QC, now the Master of the Rolls) held that where a transaction involving the disposal of an estate or interest in more than one *'building'* was proposed, the landlord must sever the transaction so as to deal with each building separately, with each offer notice dealing with a maximum of one building and one transaction. An offer notice was rendered invalid if it dealt with a transaction that involved more than one *'building'*. However, it was not intended to require integrated developments, with appurtenant premises in common use, to be split into inappropriate and unwieldy parts in order to satisfy the requirements of section 5 (3). The appropriate section 5 offer notice for such integrated developments was a single notice, contemplating a single transaction in relation to the whole of the residential part of the estate. The term *'building'* in the 1987 Act could therefore include more than one structure in some limited circumstances. Qualifying flats in one or more structures, which had appurtenant premises, within the meaning of section 4 (4) of the Act, in common use, were to be regarded as one *'building'* for the purpose of the severed transaction contemplated by section 5 (3). In the circumstances, the claimant had not proposed a transaction involving the disposal of an interest in more than one *'building'* within the meaning of the term in section 5 (3); and the premises which were the subject of the section 5 offer notice consisted of the whole or part of a *'building'* within the meaning of section 1 (2) (a). Accordingly, the notice complied with the provisions of section 5 and 5B of the 1987 Act, and was therefore a valid notice.

20. The deputy judge began his judgment by explaining that the case raised the question of whether the word *'building'*, as used in the right of first refusal provisions in Part I of the 1987 Act, could mean more than one building. As such, the case raised *"a difficult question of construction of an Act which has been judicially described (anyway before it was amended) as ill-drafted and confused"*: see [31]. In a characteristically erudite judgment, the deputy judge analysed the relevant legislation, and the relevant case law authority, none of which directly addressed the issue that was before the court. As a matter of pure construction, the deputy judge could see no way round the conclusion that an offer notice was rendered invalid by the clear words of section 5 (3) if it dealt with a transaction encompassing more than one *'building'*. However, one must have regard to the purpose of the legislation. This was to give tenants the right to acquire their landlord's reversion. In order to achieve that object, the legislature must be taken to have intended to create *"a workable procedure"*.

21. The deputy judge considered that there had been a good reason for the enactment of section 5 (3). It was intended to prevent landlords amalgamating separate structures or buildings into the same transaction so as to hinder qualifying tenants in achieving the necessary majority to enable them to purchase the freehold. It was not, however, intended to require integrated developments to be split into inappropriate and unwieldy sections. Parliament could not be taken to have intended that common yards, gardens and other appurtenant areas should have to be split into one (or even several parts) in order to satisfy section 5 (3). Such a result would be *"absurd"*, a word the deputy judge used *"advisedly"*. In those circumstances, he had no doubt that, had a case of the present kind been considered, Parliament would have intended that the appropriate section 5 notice was a single notice, contemplating a single transaction in relation to the whole of the residential part of the estate. That much was clear. But what then of the meaning of the word *'building'*? The deputy judge addressed this question at [71-74] of his judgment, as follows:

71. In my judgment, however, the term 'building', as used in the Act, must have been intended by Parliament to include more than one structure in some, albeit limited, circumstances. The question arises as to what precise circumstances. For example, one could imagine that two structures with a shared access might sensibly be regarded as one building for the purposes of the Act. There is nothing in the legislation, however, which gives any hint that that might have been the intention of Parliament — just as there is no hint that 'building schemes' were intended to be regarded as a single building because they were constructed at the same time.

72. There are few clues in the legislation as to how the absurdity involved in construing section 5 (3) as referring strictly to a single structure can be avoided. For example, there is nothing in the Act which explains how difficulties associated with severing a transaction can be resolved. It is this absence of provision which has led me to think that Parliament must have intended the Act to be construed so that such provision was unnecessary. It would only have been unnecessary if qualifying flats contained in structures, which had been using the same associated or appurtenant areas in common, were to be regarded as one building for the purpose of the severed transaction contemplated by section 5 (3). This is the single most intractable problem identified by Long Acre in this case. It says, with some force, that it would be impossible satisfactorily to divide up the use of the yards, roadways and gardens that have been used in common by the occupiers of all qualifying flats in the estate.

73. Section 4 (4) defines 'appurtenant premises' as meaning 'any yard, garden, outhouse or appurtenance (not being a common part of the building containing the flat) which belongs to, or is usually enjoyed with, the flat'. The definition is included to assist in interpreting section 4 (1), so as to make clear that the disposal of an interest in a single flat does not fall within the legislation, even if 'appurtenant premises' are included with it. But this restricted usage does not seem to me to be fatal to my construction. As the Court of Appeal held in the Denetower case [Denetower Ltd v Toop] [1991] 1 WLR 945, 952 to which I have already referred, 'the purchase notice under section 12 could have required the landlords to transfer not only the two buildings but also any appurtenances of those buildings', in the sense of yards, gardens, outhouses (but not garages) enjoyed with the qualifying flats in those buildings. In these circumstances, it seems to me that the Act cannot properly be construed as allowing the qualifying tenants in two separate structures each to acquire by separate transactions the same gardens, yards and outhouses that they have up to that time used in common.

74. Thus, the Act can only make sense, if the word 'building' is construed to mean (I accept somewhat awkwardly) either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises. I have used the term 'appurtenant premises' as it is used in

> *section 4 (4) of the Act for simplicity. If this is the correct construction of the Act, then it is true that many 'building schemes', as Long Acre has called them, will fall within the definition I have attempted. But in my view, although there is some statutory warrant for my approach, there is none for the suggestion in the 30 Upperton Gardens case [30 Upperton Gardens Management Limited v. Akano] [1990] 2 EGLR 232] that the word 'building' should be construed in a formal way as including all 'building schemes'. There will, in practice, be some building schemes where the buildings are far removed from one another, and share no appurtenant premises. In such a case, I cannot see how section 5 (3) can be construed as allowing a valid section 5 notice to be served in respect of a single transaction including two such buildings.*

22. In answer to the question *"Was the Notice Valid?"*, the deputy judge said this:

> *76. It is reasonably clear on the evidence before me that the qualifying flats on the estate share the use of the same accessway, amenity areas or gardens, car parking areas, yards, paths, and roadways, even though I have not been shown the individual leases of the 55 qualifying flats. I am, therefore, satisfied that the occupants of the qualifying flats in each of the four buildings making up the estate share the use of the same 'appurtenant premises'. Accordingly, in serving the notice, Long Acre did not propose a transaction involving the disposal of an interest in 'more than one building' within the proper meaning of that term, as used in section 5 (3) of the Act. Likewise, the premises which were the subject of the notice consisted of the whole or part of a 'building' within the proper meaning of section 1 (2) (a) of the Act.*
>
> *77. In my judgment, therefore, the notice complied with the provisions of sections 5 and 5B of the Act, and was a valid notice.*

23. The deputy judge set out his conclusion at [81-2] as follows:

> *81. For the reasons I have given, I have concluded that the word 'building' is used in the Landlord and Tenant Act 1987 (as amended) to mean either a single building or one or more buildings, where the occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises. In this context, the term 'appurtenant premises' is used in the same sense as in section 4 of the Act.*
>
> *82. The Notice served by Long Acre on 31st January 2003 was, therefore, a valid notice.*

24. *Radevsky & Clark: Tenants' Rights of First Refusal* (2021) addresses the situation of an estate comprising a number of residential blocks, and the decision in *Long Acre Securities Ltd v Karet,* at paragraphs 2.8 and 2.9. The writers note that the 1987 Act does not make express provision for the common situation of a residential estate comprising a number of blocks of flats being disposed of together. They note that it seems clear from the statutory language of section 5 (3) that even though it will often be convenient to deal with the estate as a whole, each building must be dealt with separately. The fact that the tenants in each block have rights over the common roads,

gardens and grounds of the estate creates problems which are simply not addressed in the Act. However, in *Long Acre Securities Ltd v Karet* it was held that the term *'building'* could include more than one structure in limited circumstances. Where qualifying tenants in one or more structures which had in common use appurtenant premises within the meaning of section 4 (4) of the Act, those structures were to be regarded as one building for the purpose of a severed transaction contemplated by s 5 (3). This provides *"a neat solution"* for a landlord of an estate wishing to make a single disposal. However, the judgment has been criticised. One apparently unintended consequence of the decision is that tenants in one block could be deprived of the right of first refusal if an insufficient number of tenants in another block on the same estate wished to accept the landlord's offer. By way of example, consider an estate consisting of two blocks, one containing 10 flats and the other 12. If all of the tenants in the smaller block wished to exercise the right of first refusal they would be unable to do so if none of the tenants in the other block chose to.

25. In a footnote, the writers comment that the assumption made by the deputy judge that Parliament cannot be taken to have intended that common yards, gardens and other appurtenant areas should have to be split into one (or even several parts) in order to satisfy section 5 (3) may be called into question. It may be said that:

(1) The underlying assumption is that each block should have the right of self-determination rather than preventing the amalgamation of several blocks into one sale. It may be that amalgamating separate buildings into one sale may be a device which s 5 (3) is aimed at preventing; but equally it may be said that the deputy judge's decision may make it difficult for tenants across different blocks to co-operate and they may in fact have different interests.

(2) It is not necessarily the case that appurtenant property would be split in the sense that the party serving the offer notice decides which building is to have the appurtenant property sold to it as part of the sale. The acquisition of the appurtenant property will take subject to the rights of the tenants within the other blocks over that appurtenant property. If no section 5 notice is served any competing purchase notice for the appurtenant property may be the subject of resolution by the First-tier Tribunal under section 13 of the 1987 Act.

26. In another footnote, the writers observe that the tenant in *Long Acre Securities Ltd v Karet* did not appear at the hearing to put forward any contrary arguments. However, the writers note that the deputy judge did consider all the relevant authorities, and he gave a careful reserved judgment.

27. At paragraph 2.9 the writers comment as follows:

> *It is considered that in determining whether there is one or more buildings such that one or two or more notices need to be served the following matters will need to be considered:*
>
> *(a) The plans of the buildings.*
>
> *(b) Whether there exists some underlying common structural support to the two blocks such that it is not possible to divide the blocks vertically from each other.*

> *(c) The rights that the tenants have to use appurtenant premises e.g. shared access, basement areas and common parts.*
>
> *(d) Whether the blocks are intimately connected e.g. where the buildings appear to be separate and detached, but have an underground car park running beneath all of the blocks.*
>
> *(e) Whether the two blocks were built at the same time.*
>
> *(f) Whether the blocks are managed separately or part of a single estate e.g. whether the service charge is managed singularly and not separately.*
>
> *(g) Photographic evidence of the estate.*

The guiding principle is whether, to use the words of Mr Vos QC, the blocks are *"separate in a meaningful sense"*.

28. I must confess that I entertain some concerns about the correctness of the decision in *Long Acre Securities Ltd v Karet*. First, because the substantive claim was undefended, the deputy judge did not have the benefit of any contrary argument on the point of law of general importance that he had to decide. Paragraph 6.1 of *Practice Direction (Citation of Authorities)* [2001] 1 WLR 1001 recognises the importance of adversary argument to any judgment which purports to establish a new point of legal principle, or to extend the present law. However, the deputy judge clearly did consider all the relevant authorities; and he gave a careful reserved judgment after more than six weeks of deliberation.

29. Second, section 5 (3) is in mandatory terms. For the purpose of complying with the requirement to serve an offer notice where a proposed transaction involves the disposal of an estate in more than one *'building'*, it requires the landlord to *"sever the transaction so as to deal with each building separately"*. It therefore envisages that each notice shall deal with a maximum of one *'building'*, and one transaction. At a first reading, the deputy judge's decision that Parliament must have intended the term '*building'*, as used in section 5 (3), to include more than one structure in some, albeit limited, circumstances runs counter to the conclusion that, as a matter of pure construction, an offer notice is rendered invalid by the clear words of section 5 (3) if it deals with a transaction encompassing more than one *'building'*. It is clear from [63-65] that the deputy judge was acutely alive to the fact that the mandatory provisions of sections 5 and 5A *"cannot simply be disregarded in an attempt to make the legislation work more smoothly"*. But it may be contended that this is precisely what the deputy judge set about doing.

30. Third, section 10A makes it a criminal offence if, without reasonable excuse, a landlord makes a relevant disposal affecting premises to which Part 1 of the 1987 Act applies (a) without having first complied with the requirements of section 5 as regards the service of notices on the qualifying tenants of flats contained in the premises, or (b) in contravention of any prohibition or restriction imposed by sections 6 to 10. It is an important principle of statutory construction that a person should not be penalised except under clear law. The deputy judge's construction of section 5 creates an undesirable level of uncertainty concerning the proper ambit of the required offer

notice in a case where a proposed transaction involves the disposal of an estate in more than one *'building'*. On the approach taken by the deputy judge, in order to avoid any risk of incurring criminal sanctions, landlords would need carefully to consider the *'building'* or *'buildings'* to be identified in any section 5 offer notice. They might need to serve notices in alternative forms, specifying one *'building'*, and more than one *'building'*, in order to escape from all risk of incurring any potential criminal liability. The strict application of section 5 (3) in all cases where a proposed transaction involves the disposal of an estate in more than one *'building'* involves the drawing of a clear line, and avoids any penumbra of uncertainty as to the validity of the service of a notice which carries potential criminal consequences. However, the deputy judge was clearly alive to the criminal consequences of non-compliance with the requirements of section 5: see [42].

31. Fourth, the judgment has not escaped some criticism. However, it has now stood for over 20 years, during which period it must have been followed by practitioners responsible for the drafting of section 5 notices many times.

32. Despite my concerns, this is not an appropriate occasion for me to revisit the correctness of the decision in *Long Acre Securities Ltd v Karet*. Neither party to this Part 8 claim advanced any legal argument which sought to challenge, or undermine, the authority of that case. Clearly, it was in the interests of neither party in the instant case to do so. For the claimant, the validity of its single notice in relation to Blocks B, C and E presupposed the correctness of the deputy judge's decision. For the defendant, any challenge to the correctness of that decision would have left the notice for Block A immune from any challenge. Therefore I must loyally follow the decision in *Long Acre Securities Ltd v Karet*, wherever it may take me.

33. In his earlier judgment in this case, the Vice-Chancellor addressed the question of whether the notices were correctly served for Block A, and for Blocks B, C, and E together, at [15-24]. Having set out the relevant statutory provisions, the Vice-Chancellor continued as follows:

> *22. The administrators were required to sever the proposed transaction with the respondents into separate 'buildings', and they did so in the way that I have described. Argument was focused mainly on the three blocks that were treated as one 'building', but there is a suggestion in the evidence that all five blocks may be 'linked with communal area and common facilities'. There is a plan attached to a prohibition notice served by the local authority which shows on the face of it that blocks A and B are separate blocks, and blocks C and E either adjacent or connected. A separate prohibition notice was served in relation to block B and a single notice for block C and E together. On what basis, therefore, would blocks B, C, and E be treated as a single building under the Act?*
>
> *23. In one case, Long Acre Securities v Karet [2005] Ch 61, a deputy judge held that owing to the sharing of grounds and appurtenances between a number of blocks of flats, they were properly to be treated as one building. That is not quite this case on the evidence: what is said is that there is a connection between blocks B and C, and I think this may have meant to say C and E, and that all three blocks share common*

> *services and facilities. These questions are very fact-sensitive. The judge in Karet considered that a number of factors may be relevant, including the plans of the buildings, underlying structural support for the blocks, lessees' rights to use appurtenant premises, connections at any levels, the dates of construction of the blocks, how the blocks are managed (i.e., whether together or separately), how the service charge is operated, and visual impressions. The only evidence on behalf of the respondents was that blocks B and C, though possibly meaning blocks C and E, interconnect, though no detail was provided, and that all three of the blocks covered by the second set of notices share services and plant.*
>
> *24. I do not consider that it was possible or right to conclude, at an initial hearing, that there was no arguable issue that block B and also possibly each of blocks E and C were to be treated as separate buildings, in which case the administrators would have been obliged, as regards service of section 5 notices, to separate them out. The position in relation to block A is also not entirely clear. It may be that all four blocks amounted to a building because of the degree of sharing of the appurtenant property. There was sufficient raised on behalf of FSV in the evidence to suggest that treating blocks B, C and E as a single building was doubtful. That being so, in my judgment the District Judge was wrong to foreclose further consideration of that issue and wrong for that reason to grant the declaratory relief that he did at that stage.*

The evidence

34. The claimant relies upon three witness statements of Mr Kieran Moore, a director of the claimant, dated 15 September and 3 November 2021 and 14 August 2024. He gave evidence remotely by video-link from New York, USA where he had flown the day before the trial *"due to a family matter"*. Despite some opposition from Mr Asghar, I permitted this, even though the trial had been listed since the middle of June and there has been no adequate explanation for Mr Moore's late absence from this jurisdiction. Despite an invitation from the bench, Mr Asghar did not cross-examine Mr Moore about his reasons for absence. I am satisfied that the fact that Mr Moore gave evidence remotely, for about 30 minutes, did not detract from the quality of his evidence. However, Mr Moore was only able to give limited assistance to the court because he had first viewed the Fox Street Village development only early in 2020; he had not been privy to the advice given to the administrators by their solicitors about the decision to serve two offer notices, one for Block A and the other for Blocks B, C and E together; and neither he, nor anyone else at the claimant company, had had any involvement in the service of the section 5 notices, or the form that they had taken. In his second witness statement, Mr Moore had stated that Blocks B, C and E were *"connected"*. This was the witness statement on which District Judge Lampkin had relied at the first hearing of the Part 8 claim when deciding that the defendant's response to the claim was totally without merit. At paragraphs 3 – 5 of Mr Moore's third witness statement, he explains as follows:

> *3. My understanding is that Block A was built first, as it was a refurbishment and redevelopment of an existing, long-standing building. It had its own utility services such as gas, water and electrics. It is a*

> *Block which stands on its own and is separate to the others. Hence, I understand why Block A was severed from the others.*
>
> *4. I understand that Blocks B, C & E were built as 'Phase 2' of the development of Fox Street. They were built around the same time. They share utilities such as electrics, gas and water. They are all serviced by one plant room, which is contained in Block C. All incoming services for Blocks B, C & E for water and gas are routed directly through the plant room in Block C. Essentially, none of Blocks B, C or E could operate on its own and I believe this is the reason they were treated as one singular 'building' for the purposes of the Section 5 Notices.*
>
> *5. As well as the plant room and share [sic] utilities, and the fact they were built at the same time, Blocks B, C & E also share a car park and access points. For all intents and purposes, they are one building. One cannot operate without the others, in particular when it comes to the routing of utilities.*

35. In cross-examination, Mr Moore accepted that there was no physical connection between Block B and Blocks C/E, and that they only shared services or utilities. Although Mr Moore did not expressly accept this point when it was put to him by Mr Asghar, I am satisfied that he did not look for anything that might tend to show that the section 5 offer notices might be invalid, and specifically for anything that might tend to show that Block A might share any facilities or amenities with the other three Blocks. Nor had Mr Moore investigated the feasibility, the timescale or the cost of providing services and utilities to Block B independently of Blocks C/E.

36. The claimant also relies upon witness statements of Mr Gary Howard dated 15 August 2024 and Ms Rosemary Jane Janvier dated 23 August 2021. Mr Howard was a director of Linmari Construction Limited (now dissolved); and it was he who oversaw the construction of Blocks A, B, C, D and E. He confirm that Blocks B, C and E were all part of one job. The construction of Block A was a separate job, as this was the refurbishment of an existing building. The construction of Block D was also a separate job as its location was not on the same site as Blocks B, C and E. The construction of Block D was never in any event completed. Blocks B, C and E had to be completely built from scratch. The same subcontractors were instructed to complete all three blocks. The construction of Blocks B, C and E was commissioned as one job; and all financial matters were kept under one account, separate from that of Blocks A and D.

37. Blocks B, C and E were designed the same and were built to mirror each other. The same materials were purchased for all three blocks. They had the same windows, cladding, roof tiles, and gables installed. Block B was built without any basement or plant room. This was because the basement under Blocks C and E was built to be utilised as the plant room for all of Blocks B, C and E. All the services installed were to accommodate all three blocks. There was one boiler installed to service all three blocks, there was one CCTV system installed to service all three blocks, the generators, substations, and service tanks installed were to service all three blocks. The three blocks were all painted the same colour, and they had the same features fitted. Structurally and aesthetically, there was nothing to differentiate Blocks, B, C and E.

38. The three blocks were all built on shared grounds as they were one estate, and only one access point was built allowing entrance and exit to Blocks B, C and E. Mr Howard received confirmation of the instruction to build all three blocks at the same time. He understood that planning permission for the construction of the three blocks was granted at the same time. There was never any indication that Blocks B, C and E were not one job or one unit. They shared all the same services, materials, and labour.

39. On the day after Mr Howard's witness statement was made, a hearsay notice was served in relation to it on the basis that Mr Howard *"resides overseas and is not willing to give oral evidence"*. I note that the address stated for Mr Howard in his witness statement is c/o 116 Duke Street, Liverpool 1, which was the address for Linmari Construction Ltd. Mr Howard did not give oral evidence at trial.

40. Ms Janvier was the solicitor at Hill Dickinson LLP's Liverpool office who acted for the administrators in relation to the service of the section 5 offer notices. She states that it was considered that Block A *"formed a self-contained block that could be sold separately from the remainder of the estate and offered to the qualifying tenants of Block A"*. Blocks B and C were *"inter-connected"*, and Block B, C and E *"share services and plant and therefore it was considered that Block B, C and E formed a single block and the freehold of that single block should be offered to the qualifying tenants of Blocks B, C and E"*. On 16 August 2024, a hearsay notice was served in relation to Ms Janvier's evidence on the basis that she had *"since moved firms and does not wish to attend trial"*. Ms Janvier did not give oral evidence at trial.

41. Ms Janvier's witness statement exhibits the two section 5 offer notices. The block or blocks to which each notice relates is shown edged red on the plan attached to each notice. The red edging extends only to the exterior walls of the actual buildings, and does not include any surface car parking spaces or any common parts or access roads or ways.

42. The defendant's evidence comprises four witness statements from Mr Samuel Ip, a director of the defendant company and a resident of Hong Kong, dated 6 October 2021, 15 November 2021, 12 April 2022, and 20 September 2024. This last witness statement makes reference to a second witness statement dated 19 October 2021 which is not in the trial bundle and was not verified by Mr Ip when he was called to give evidence (for about 40 minutes).

43. In his fourth (and principal) witness statement, Mr Ip points out that the Fox Street Village development was carried out under two separate planning permissions. The first, granted in August 2014, was for the conversion of the existing Swainbanks Building (Block A) and the redevelopment of the remainder of the site by the construction of Blocks B, C and D. A second planning consent, for the construction of Block E, was granted over a year later, in September 2015. When, in March 2019, the City Council issued an enforcement notice asserting breach of planning control in the implementation of these two planning consents, it issued a single notice in relation to all five Blocks (including Block D), although this was later quashed on a technicality (because it did not *"specify with sufficient clarity the alleged breach of planning control and the steps required for compliance"*). However, Mr Ip makes the point that all five blocks remain amenable to enforcement action in relation to any breach of planning control in respect of any one of the blocks. Mr Ip states that the City Council served separate prohibition orders on Blocks B and C/E in March and April 2019

respectively; and that these were revoked on different dates (in February and July 2020).

44. Mr Ip points to the amenities and facilities actually and intended to be shared in common by all five blocks, such as refuse storage bins, cycle parking facilities, the servicing arrangements, and the vehicular access to Blocks A, B, C and E from Fox Street via Back Beau Street, which runs between Blocks A and E. There are separate right to manage companies for each of Blocks A, B and C/E. However, there is a single tenants' association for the whole of the Fox Street Village development.

45. At paragraph 41 of his fourth witness statement, Mr Ip asserts that to re-arrange the routing of services such as water, gas and heating to run separately to each of Blocks B and C/E *"would be just a day or two's works"*. When I asked Mr Ip about this part of his evidence, he said that this was his opinion, although he accepted that he possessed no relevant qualifications enabling him to opine on such matters. I find that there is no proper evidential basis to justify this bare assertion on the part of Mr Ip.

46. In cross-examination, Mr Ip explained that he was no longer a leaseholder in the Fox Street Village development. In re-examination, he explained that the refuse storage bins located to the east of the parking area between Blocks B and C, and shown on the photograph at page 983, serve all of Blocks A, B, C and E.

47. Neither party called, or had permission to rely upon, any expert evidence. However, Mr Byrne seeks to rely upon a written valuation report on Fox Street Village, prepared for the joint administrators of FSV by Mr Colin Jennings FRICS (of Lambert Smith Hampton) and dated 4 September 2019 (at pages 1025-1060 of the hearing bundle) and upon emails that Mr Jennings sent to the claimant's solicitors in July 2024 (at pages 1061-8). These include the following:

> *To summarise the various elements forming the site Block A was a conversion of an original building which was constructed on the Fox Street elevation and was self-contained.*
>
> *Blocks B, C and E were blocks which were substantially completed and lay to the left-hand side and rear of Block A, with Blocks C and E being along the frontage with Prince Edwin Street and Block B situated immediately to the rear of Block A.*
>
> *Block D on the other hand was incomplete and lay to the right-hand side of Block A. It required a considerable expenditure to complete the construction works to make the building wind and watertight and thereafter be completed internally.*
>
> *…*
>
> *Block A was … a stand-alone Block and again it was accepted as being so from a Section 5 perspective.*
>
> *Blocks C and E were adjoining, and Block B was set across an open area of shared car parking and landscaping from this Block. They were however connected in terms of services and in particular the boiler room*

> *for all three Blocks was situated within Block C. From this perspective they needed to be managed as a single unit and as such we considered were required to remain within the same ownership whereas there was no similar linkage applied to Blocks A and D which could be separated in terms of ownership.*
>
> *It was on this basis that we advised the Administrators and their solicitors Hill Dickinson in serving the Section 5 Notices they should be in three separate elements being Blocks A and D each in isolation and jointly in respect of Blocks B, C and E. It was on that basis that we understand that Notices were served upon the lessees of each element of the development, and these Notices reflected the apportionment of the overall purchase price which had been submitted by MCR and then accepted by Fortis. I would reiterate that this was a purchaser's apportionment not one which we dictated but we did 'sense test' the apportionment from a valuation perspective to be satisfied that the respective interest being offered were being fairly treated from an apportionment perspective of the overall purchase price.*

48. On the morning of the trial, the claimant filed and served copies of specimen leases of one of the residential units within each of the four blocks A, B, C and E. At the end of the hearing, the court indicated that it would reserve its judgment; but it stated that it would wish to see a copy of the relevant title plans for title numbers LA303457 and MS359943, referred to in those leases, before delivering its judgment. The defendant indicated that it wished to have an opportunity of making written submissions, if so advised, regarding the leases and the title plans. The claimant indicated that it would wish to have the opportunity of presenting written submissions in reply. The court gave directions accordingly for the filing and service of sequential written submissions from both parties.

49. On 29 October 2024, the claimant's solicitors wrote to the court enclosing a copy of the filed plan for title number LA303457. They notified the court that title number MS359943 was now closed, and that the only document available for download from the Land Registry was the enclosed lease, dated 11 October 1954. On 5 November 2024 the defendant's representative, Mr Samuel Ip, wrote to the court confirming that the defendant had received the title plan and that it had no further submissions to make in respect of the leases. Mr Ip invited the court to proceed to deliver judgement when it was able to do so. Unfortunately, this letter was not drawn to my attention until 10 December 2024, after I had queried the position with the court by way of CE-File Alert the previous day. This explains my delay in preparing and handing down this written judgment.

Submissions – the claimant

50. For the claimant, Mr Byrne points out that there is an absence of cases where courts or tribunals have been asked to consider the definition of *'building'* for the purposes of Part 1 of the 1987 Act. However, he submits that useful reference may be made to decisions contemplating the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002 (**'the 2002 Act'**), on the basis that this contemplates the grant of rights and the protection of long leaseholders' rights and privileges, insofar as they affect the ownership or management of their superior interest. Mr Byrne further

submits that, for the same reasons, reference to or reliance upon planning permissions, or any enforcement action thereunder, is misguided as those legal frameworks and principles apply a different yardstick and consider the use of premises regardless of the occupiers' rights as a leaseholder and pursuant to the 1987 Act.

51. Mr Byrne submits that Block A is a '*building'* as it is physically discrete and self-contained. Further, since Blocks C/E and B share numerous multi-faceted and multi-layered common facilities which cannot be practically or conveniently separated, Blocks C/E and B together constitute a single *'building'* for the purposes of the 1987 Act. FSV's joint administrators were therefore correct in serving one notice for Block A and a single notice for Blocks B and C/E combined. Mr Byrne relies upon the evidence of Mr Moore, who states that Blocks B and C/E share utilities such as electricity, gas and water, and are all serviced by a single plant room, which is contained in Block C; that all incoming services for Block B are routed through the plant room in Block C; and that *"none of Blocks B, C or E could operate on its own"*, *"in particular when it comes with the routing of utilities"*. Mr Jennings is said to support that understanding. Mr Byrne submits that Blocks B and C/E constitute a single *'building'* given the nature and extent of the services and facilities that they share, and the impractical nature of the works that would be required to sever that physical relationship.

52. Mr Byrne referred to several authorities on the right to manage under the 2002 Act. However, as he recognises (at paragraph 29 of his skeleton argument), importantly the 2002 Act 2002 contemplates (in section 72 (4) (b)) *"the carrying out of works"* to render the supply of services independently to the different parts of the building, whereas the 1987 Act does not. Section 72 identifies the premises to which the provisions of Chapter 1 of Part 2 of the 2002 Act, relating to the acquisition and exercise by an RTM company of the right to manage, apply. Section 72 (4)

> *... applies in relation to a part of a building if the relevant services provided for the occupiers of it –*
>
> *(a) are provided independently of the relevant services provided for occupiers of the rest of the building, or*
>
> *(b) could be so provided without involving the carrying out of works likely to result in a significant interruption in the provision of any relevant services for occupiers of the rest of the building.*

Because of this difference in the provisions of the two statutes, I do not derive any real assistance from the authorities on the 2002 Act. Nor do I consider that Mr Asghar's reliance upon Mr Moore's failure to consider the separation of the services shared by Block B with Blocks C/E has any particular relevance to my determination.

53. In oral submissions, Mr Byrne emphasised that Fox Street Village essentially comprises student accommodation, in the nature of a hostel, a feature addressed in none of the existing authorities. Block B is effectively an annexe to Blocks C/E. The specimen lease of a unit within Block A was said to confer no rights beyond the building itself, save in relation to any appurtenant car parking space. Measures taken by the local planning authority, by way of enforcement of planning control, are not the appropriate yardstick the court should be considering. In response to the authority

cited by Mr Asghar on the meaning of *'appurtenant property'* (referenced below), Mr Byrne referred the court to observations of Lord Briggs (delivering the judgment of the Supreme Court) in *FirstPort Property Services Ltd v Settlers Court RTM Company Ltd* [2022] UKSC 1, [2022] 1 WLR 519 at [43]. Pointing out that the list of *'appurtenant property'* in the definition section 112 (1) of the 2002 Act *("any garage, outhouse, garden, yard or appurtenances belonging to, or usually enjoyed with, the building or part or flat"*) is a list of physical, corporeal objects, Lord Briggs said that there was *"force in construing the word 'appurtenances' in this context ejusdem generis so as not to include incorporeal rights such as easements"*. The actual decision in the *FirstPort* case was that only such property as appertains exclusively to the premises over which the right to manage is claimed will be *'appurtenant'* property for that purpose. Shared estate facilities, the use of which is enjoyed in common with the occupiers of other premises, are not within the scope of the right to manage, which is concerned only with the management of the relevant premises, together with nearby physical property over which the occupants of the relevant building (or part) have exclusive rights.

54. In his reply, Mr Byrne pointed to the photograph at page 471 of the trial bundle (also at page 1138) which shows refuse bins standing outside the north-east corner of Block A. These also appear on the photograph in the same series at page 475 (also page 1142). I note that these bins do not appear on the apparently later photographs at pages 989 and 991, which form part of the series of photographs that show refuse bins standing between Blocks B and C (at pages 982-5). I also note that the area on which the bins pointed out by Mr Byrne are standing is outside the area shown edged red on the section 5 offer notice served in relation to Block A. The bins standing between Blocks B and C are also outside the area shown edged red on the section 5 offer notice served in relation to Blocks B, C and E.

55. Mr Byrne pointed out that until the ownership of the constituent buildings is severed, it is likely that any development will be managed by the same property manager.

56. Mr Byrne also pointed out that the full extent of the rights granted by their occupational leases to individual leaseholders over the common parts of Fox Street Village, as distinct from the individual blocks, is apt to cause confusion because the definition of *'Common Parts'* refers to passageways, stairways and service installations *"within the Building"*, rather than within *'the Estate'*. He submits that the definition of *'Common Parts'* is consistent with areas within a built structure, rather than an open estate, and that any rights granted to individual leaseholders over *'Common Parts'* should be treated as extending only to the relevant block, and not to the whole of the Fox Street Village estate. However, I note that the Lease of Unit AS1 and Car Park Space 32, dated 5 January 2017, clearly grants the tenant *"the right to park and pass over and along those parts of the Estate with or without a vehicle as shall form the Car Park* [defined as *"that area within the Estate which forms the access to the Car Parking Space but excluding any area which is demised as a Car Parking Space (if any)"*] *for the purpose only of obtaining access to the demised Car Parking Space":* see para 10 of Part 1 of the Second Schedule.

57. In conclusion, Mr Byrne submits that the court has a broad discretion to consider all of the evidence before the court. He invites the court to enter judgement in favour of the claimant, and to award it its costs of bringing this claim.

Submissions – the defendant

58. Applying the analysis in *Long Acre Securities Ltd v Karet*, Mr Asghar submits that a single section 5 offer notice should have been served for all four Blocks A, B, C and E together as they all share appurtenances, such as a shared car park, whilst some tenants of Block A have rights over car parking spaces located between Blocks B and C. Part 1 of the 1987 Act was never intended to require integrated developments, with appurtenant premises in common, to be split into inappropriate and unwieldy parts. That is said to be supported by the fact that Liverpool City Council served one enforcement notice, dated 22 March 2019, and one planning contravention notice, dated 30 May 2024. However, I note that the first of these notice extended to Block D as well as to the other four blocks.

59. Alternatively, if all of Fox Street Village is not considered to be one *'building'*, then Mr Asghar submits that Block A is one building, Block B is a second, and Blocks C and E together form a third separate building, meaning that three separate sets of offer notices should have been served. This is based, amongst other matters, on the way the City Council treated the blocks when serving two separate prohibition notices in March and April 2019, one for Block B alone, and another for Blocks C and E. On this alternative case, Mr Asghar was constrained to accept that the offer notice in respect of Block A would have been valid.

60. Mr Asghar emphasises that the guiding principle is whether the relevant structures, in this case blocks of flats, are separate in a meaningful sense. He relies on the decision in *Long Acre Securities Ltd v Karet* as authority for the proposition that the term *'building'* can include reference to more than one structure where occupants of the qualifying flats in each of those buildings share the use of the same appurtenant premises. Mr Asghar relies upon the conclusion reached by Zacaroli J in *York House (Chelsea) Ltd v Thompson* [2019] EWHC 2203 (Ch), [2020] Ch 1 at [113], after a review of the authorities, that *"appurtenances include areas over which the tenants have rights under their leases and areas which are usually enjoyed with the building, including those to which access is required by the landlord for the purposes of complying with its obligations (owed to the tenants) to repair and maintain the building"*. This authority was not referred to by Lord Briggs in *FirstPort*, nor was it apparently cited in argument in that case. Unlike *FirstPort*, *York House* concerned the meaning of *'appurtenances'* in the context of Part 1 of the 1987 Act, rather than the right to manage conferred by the 2002 Act. However, the relevant wording of each statute is materially the same. I do not detect any inconsistency between the two decisions. In each case, the term *'appurtenances'* was construed as extending only to physical areas of land, rather than to incorporeal rights over land.

61. Mr Asghar points out that the burden of proof is on the claimant to demonstrate that it complied with the mandatory requirements of the 1987 Act, and that it was therefore correct to serve two sets of notices as it did. Mr Asghar submits that the claimant is unable to meets this burden on the evidence presented. It would appear to be common ground between the parties that Blocks C and E are interconnected, share appurtenances, and cannot be separated from each other. Whilst they are not interconnected, Mr Asghar submits that Blocks A and B also share, at the least, some of the same appurtenances, and that the entire development is so interconnected and dependant on each block, that it can only really be considered to be one *'building'*,

albeit comprising four separate blocks. Indeed, although two separate notices were served by the claimant's predecessor, the claimant acquired all of Blocks A, B, C and E (as well as Block D).

62. As set out in the fourth witness statement of Mr Ip, numerous factors point towards all four of Blocks A, B, C and E together constituting one building, including the following:

(1) The car park between Blocks B and C/E is also used by Block A's leaseholders. The leaseholder of Flat AT4 paid £59,950 for that unit, which included £5,000 for a parking space, which is located in front of Block E.

(2) Public access to Block B is via Back Beau Street, which runs between Blocks A and E.

(3) A single enforcement notice, dated 22 March 2019, was served by Liverpool City Council in relation to all five blocks, with the Council treating the entire Fox Street Village development as one at that time.

(4) The Planning Inspectorate's appeal decision, dated 11 December 2019, quashing the enforcement notice on the grounds that it did not specify with sufficient clarity the alleged breach of planning control, and the steps required for compliance, accordingly dealt with all five blocks at the same time.

(5) Originally, there were to be 179 basement car parking spaces under Block D, which were to be shared by the tenants of all five blocks, although these were never built, in breach of planning requirements.

(6) The leaseholders of all the blocks have rights to use and enjoy various services and amenities in appurtenant premises, such as refuse and cycle storage, servicing arrangements, amenity space, and hard and soft landscaping, including tree planting.

(7) There was a planning condition requiring the sharing of the use of various facilities, amenities, and rights of access, such as refuse and cycle storage, servicing arrangements, and amenity spaces.

(8) The whole of Fox Street Village needs to have acoustic and escape strategies. It could give rise to serious fire risks if Block A could restrict access to Block B, if, for example, they were to be sold separately to different landlords.

(9) There would be no proper way to split the development between Blocks A, B, C and E because leaseholders in the individual blocks have rights over parts of the others, which could hypothetically be blocked if treated separately.

(10) All of the leaseholders have formed one tenants' association, which tenants from all four of Blocks A, B, C and E can join.

(11) Landscaping was intended to be enjoyed by all of the leaseholders of all of the blocks.

(12) Valuation reports were prepared for all of the blocks together.

(13) There was to be a management suite providing 24/7 access for the residents, and pedestrian movement in what was to be student accommodation.

(14) Liverpool City Council served a single planning contravention notice, dated 30 May 2024, asserting that the development of all five residential blocks A-E was not in accordance with the relevant planning permissions and planning application.

(15) Liverpool City Council served a single improvement notice, dated 6 June 2024, under section 11 of the Housing Act 2004 in relation to all four blocks, founded upon the existence of a Category 1 electrical hazard in the form of an unauthorised, unmetered electrical supply to all of the flats and common parts in Blocks A, B, C and E.

(16) Ultimately, all of Fox Street Village was sold as one development, it is kept as one development, and it can only function as one development.

63. Mr Asghar submits that these factors, taken individually or cumulatively, demonstrate that the different blocks share appurtenant premises such that they should be treated as a single building, following the guidance in *Long Acre Securities Ltd v Kennet*. Parliament never intended such an interconnected development to be split into *"inappropriate and unwieldy parts"*. As was the position in that case, it would be impossible satisfactorily to divide up the appurtenant areas used in common. Therefore the notices served were invalid because only one notice should have been served for all four of Blocks A, B, C and E.

64. Alternatively, if all four blocks are not to be treated as one building for the reasons set out above, then the question arises: How many different buildings are there, two, three or four? Mr Asghar submits that there are not only two buildings, as contended by the claimant; rather there are three separate buildings, comprising Block A, Block B, and Blocks C/E combined.

65. Mr Asghar points out that at [23] of his earlier judgment, the Vice-Chancellor expressly recognised that how the service charge was operated was a relevant consideration in determining the issue of how many buildings there are. Despite this, the claimant, as the landlord with access to the administrators' records, has given no proper evidence of how the service charges are, or were, operated. He invites the court to draw adverse inferences from that omission.

66. Mr Asghar relies upon the following, amongst other, matters as demonstrating, if required, that Blocks B and C/E constitute two separate buildings:

(1) There are three different right to manage companies for Blocks A, B, and C/E respectively, and the service charges are managed by them for the respective blocks.

(2) The construction of Block B was completed after Blocks C and E.

(3) As a building, Block B stands on its own, separated from Blocks C/E.

(4) There is a car park between Blocks B and C/E.

(5) Blocks C/E connect.

(6) Liverpool City Council served two separate prohibition orders, dated 29 March and 17 April 2019, on Block B and Blocks C and E.

(7) Although Liverpool City Council served a single electricity improvement notice for all four blocks, dated 6 June 2024, it required, amongst other things, two new panels and cutouts, one for Block B and another for Blocks C/E.

(8) Although the mains for utilities are first bought into the basement plant room for Block C, and then connected to Block B, Mr Ip asserts that to rearrange these to run independently would be possible with *"just a day or two's work"*.

67. In his closing submissions, Mr Asghar emphasised that Back Beau Street, between Blocks A and E, is required by the residents of Blocks B, C and E to access their respective flats, by residents of Block A to access their car parking spaces, and by workers collecting refuse from all four blocks. He pointed to the sign '*Welcome to Fox Street Village'* (at page 1007 of the trial bundle) proclaiming that Residence (Liverpool) Ltd acts as the managing agent for the whole of Fox Street Village. Mr Asghar also emphasised that all of the blocks form part of an integrated, student residential village. Praying in aid the last sentence of [72] of the judgment in *Long Acre Securities v Kennet*, Mr Asghar submits that it would be impossible satisfactorily to divide up the use of the yards, roadways and other areas that are used in common by the occupiers of all the qualifying flats in Fox Street Village. He submits that the four blocks are not separate in any meaningful sense. He particularly relies upon the tenants' rights to use appurtenant premises, enjoyed with their individual flats.

68. Mr Asghar emphasises the burden of proof that rests on the claimant. He points to its failures to address the fact that Block A shares appurtenant premises with Blocks B, C and E; and to adduce evidence about the feasibility, and the cost, of separating the utilities and services used in common by Blocks B and C/E. He accuses the claimant of a selective presentation of the evidence, with Mr Moore failing to address any matters adverse to the claimant's case, resulting in an incomplete, and partial, picture being placed before the court. Mr Asghar submits that there is one composite building, comprising four blocks, which all share one common pedestrian and vehicular access point from Fox Street via Back Beau Street. Should any purchaser seek to construct a wall blocking access to Back Beau Street from Block A, relevant flat owners within Block A would be denied access to their demised car parking spaces outside Blocks C and E. The fact that Fox Street Village comprises student accommodation actually supports the defendant's case because it reinforces the inter-connection between all four blocks, with students mingling together as part of a student village. It is irrelevant that Block A was an existing construction because it was refurbished at the same time as the other new-build blocks, and as part of the same planning consent. The open space between the four blocks is all managed together and cannot sensibly be separated out in any meaningful sense.

69. Mr Asghar acknowledged that some of Mr Ip's evidence represented matters of opinion; but other parts of his evidence were based upon his own observations and knowledge. He should be regarded as a reliable witness, whereas Mr Moore should not, due to his evident partiality, his failure to consider or address any point that might adversely affect the claimant's case, his limited first-hand knowledge of the development, and his reliance on documents produced by others. For all these reasons, Mr Moore's evidence should be approached with caution; and it should be

accorded very little weight. Mr Asghar acknowledged that nothing much turned on Ms Janvier's evidence. However, very little weight should be accorded to Mr Howard's evidence, given the lack of any satisfactory reason for his absence from the witness box, and the failure to call him to give evidence remotely from abroad.

70. In conclusion, Mr Asghar reiterated that it was for the claimant to prove its entitlement to the declaratory relief it seeks. The court did not need to be satisfied that the defendant was correct.

Analysis and conclusions

71. I have already made it clear that, notwithstanding my concerns about the decision in *Long Acre Securities Ltd v Karet*, I should loyally follow it wherever it may take me: see [28-32] above. Determining whether more than one structure constitutes a single *'building'* for the purposes of the tenants' right of first refusal under Part 1 of the 1987 Act involves weighing and balancing a number of competing factors. That is a consideration to which I shall return later in this section of my judgment. At this point, it may be useful to pause and reflect upon the evidence and submissions the court has summarised above.

72. One feature of the evidence that seems to me to be of particular importance is the common access that all four blocks A, B, C and E enjoy through Back Beau Street, which runs between Blocks A and E. This is used both by private vehicles and by vehicles servicing all four blocks. It is of particular significance for those individual leaseholders of Block A whose demise extends to individual surface car parking spaces situated outside Blocks C and E (and possibly Block B also).

73. The Lease dated 5 January 2017 of Unit AS1 on the second floor of Block A (and registered under Title No MS639965) includes a surface car parking space (No 31) immediately in front of Block C. At page 357 of the trial bundle there is the filed plan for Title No MS640009 which shows a surface car parking space immediately in front of Block E. This would appear to be demised with Unit AT4 on the third floor of Block A: see the schedule of notice of leases affecting the freehold title registered as LA303457 at page 533 of the trial bundle. That schedule also records that the leases of a further five residential units within Block A also include car parking spaces: AF10 on the first floor, AT9 on the third floor, AT14 on the third floor, AP8 on the penthouse floor, and AT10 on the third floor. There is no evidence as to the precise location of these car parking spaces. However, the overwhelming likelihood is that they all lie somewhere between Blocks A, B, C and E, and are accessed from Fox Street via Back Beau Street, between Blocks A and E.

74. At paragraph 5 of his third witness statement Mr Moore makes the point that Blocks B, C and E all *"share a car park and access points"*. However, he fails to make the same point in relation to Block A.

75. It is noteworthy that the red edging shown on the plans attached to the separate section 5 offer notices for Block A, and for Blocks B, C and E combined, extends only to the exteriors of the blocks themselves. The red edging does not extend into the areas occupied by any of the car parking spaces, or into any part of the common access and amenity areas. Since the claimant elected not to call Ms Janvier to give oral evidence, it was not possible to question her as to the reasons for this. One

possible explanation is that the joint administrators' solicitors recognised the difficulty of dividing up these areas between the individual blocks that make up the Fox Street Village development.

76. I have already indicated that I derive no real assistance from the authorities on the 2002 Act: see [52] above. That is because section 72 (4) (b) of the 2002 Act 2002 contemplates *"the carrying out of works"* to render the supply of services independently to different parts of the building whereas the 1987 Act contains no equivalent provision. I therefore do not consider that Mr Asghar's reliance upon Mr Moore's failure to consider the potential separation of the services shared by Block B with Blocks C/E has any particular relevance to my determination.

77. I have also explained that I do not detect any inconsistency between the observations of Lord Briggs in *FirstPort Property Services Ltd v Settlers Court RTM Company Ltd* [2022] UKSC 1, [2022] 1 WLR 519 at [43] and those of Zacaroli J in *York House (Chelsea) Ltd v Thompson* [2019] EWHC 2203 (Ch), [2020] Ch 1 at [113]: see [60] above. In each case, the term *'appurtenances'* was construed as extending only to physical areas of land, rather than to incorporeal rights over land.

78. I recognise that, superficially at least, there may be some attraction in Mr Byrne's submission that any reference to, or reliance upon, planning permissions, or to any enforcement action under planning control, housing legislation, and building and other applicable regulations, is misguided. He contends that those legal frameworks and principles *"apply a different yardstick"*; they consider the use of premises regardless of the occupiers' rights as a leaseholder pursuant to the right of first refusal conferred by Part 1 of the 1987 Act. However, I am satisfied that such matters may constitute relevant factors for the court to consider when addressing the issues that are presently before it. That is because they may reflect the inter-connection between the different structures comprising the Fox Street Village development, and the unsuitability of splitting them into inappropriate and unwieldy parts. The fact that the local planning authority considered enforcement action to be appropriate in relation to all four (or five) blocks together illustrates, and reinforces, Mr Ip's point that all the blocks together remain amenable to enforcement action in relation to any breach of planning control in respect of any one of the four (or five) constituent blocks.

79. I move on to address the issues this court must determine. In considering whether more than one structure constitutes a single *'building'* for the purposes of the tenants' right of first refusal under Part 1 of the 1987 Act, I agree with the Vice-Chancellor, at [23] of his earlier judgment in this case, that the following factors will be relevant considerations:

    (1) Plans of the structures

    (2) Underlying structural support for the structures

    (3) Lessees' rights to use appurtenant premises

    (4) Connections at any levels

    (5) The dates of construction of the structures

(6) How the structures are managed (i.e., whether together or separately)

(7) How the service charge is operated

(8) Visual impressions

These largely mirror the considerations identified at paragraph 2.9 of *Radevsky & Clark: Tenants' Rights of First Refusal*.

80. However, the evidence in this case demonstrates the potential relevance of at least five further factors, namely:

(9) Means of access to the structures and any appurtenant premises

(10) How the structures are serviced

(11) The sharing of common facilities and amenities

(12) The planning history of the structures, and any enforcement action taken in relation to planning requirements and conditions

(13) The requirements of housing legislation, and building and other applicable regulations, and the measures considered necessary to enforce compliance with them

81. These are not intended to constitute an exhaustive list of the potentially relevant factors. I recognise that some of them may overlap. Particular individual factors may point in different directions. All of them will require weighing in the balance in what is essentially a multi-factorial evaluation exercise. In any individual case, however, a particular factor or factors may exert a magnetic attraction in favour of a certain conclusion.

82. I will consider each of these factors in turn:

(1) Plans of the structures

The plans show Blocks A, B and C/E as physically separate buildings. Blocks C/E share a common entrance and central stair core. The plans tend to show that there are three, rather than one or two, separate buildings.

(2) Underlying structural support for the structures

The plans show that none of the Blocks provide any structural support for the others, save possibly for Blocks C and E. This points to there being at least three, and possibly even four, separate buildings.

(3) Lessees' rights to use appurtenant premises

The occupational leases are poorly drafted and fail to make it clear to what extent individual leaseholders enjoy express rights over the amenities and facilities of the development outside their individual blocks. However, leaseholders of Blocks B, C and E clearly enjoy rights of access over Back Beau Street and other communal areas to access their individual blocks. Leaseholders of Block A with appurtenant car

parking spaces between Blocks B, C and E clearly have express rights over Back Beau Street and the communal access ways to pass to and from their individual car parking spaces. In practice, leaseholders of all four blocks pass over communal areas to access the refuse storage bins between Blocks C and B. This points to there being only one building, enjoying access from Fox Street via Back Beau Street.

(3) Connections at any levels

The only connection between different structures is between Blocks C/E. This points to there being three separate buildings.

(5) The dates of construction of the structures

Mr Howard addresses the construction of all five structures in his evidence, which I have noted at paragraphs 36-38 above. Block A was created from an existing building and was the first to be developed. This was followed by the construction of Blocks B and C/E. However, Blocks A, B, C (and D) were all constructed pursuant to a single planning permission, with planning permission for Block E only being granted some 20 months later. This factor seems to me to be neutral.

(6) How the structures are managed (i.e., whether together or separately)

There are three separate right to manage companies for Blocks A, B and C/E, all incorporated in January 2021. However, there is a single managing agent, and a single tenants' association, for all four blocks. This factor seems to me to be neutral.

(7) How the service charge is operated

The evidence is not entirely clear on this point. Mr Asghar criticises the claimant for providing no proper evidence of how the service charges are, or were, operated; and he invites the court to draw adverse inferences from this omission. However, there are three different right to manage companies for Blocks A, B, and C/E respectively, which manage the service charges for their respective blocks. The existence of three right to manage companies would suggest that there are three separate service charge regimes; but it is not clear to me how the costs of maintaining the external communal areas are treated. I consider that there is insufficient evidence about how the service charge is, or could be, operated to enable the court properly to weigh this particular factor fairly in the balance.

(8) Visual impressions

The photographic images show an integrated residential development comprising three separate structures (Blocks A, B and C/E) grouped around central parking spaces and communal amenity areas (including an area where refuse is stored in shared bins). These three structures all share a single combined vehicular and pedestrian access from Fox Street. This is consistent with one building rather than three.

(9) Means of access to the structures and any appurtenant premises

Mr Howard states that Blocks B, C and E were all built on shared grounds as they were one estate, and only one access point was built allowing entrance and exit to

Blocks B, C and E. However that access point also adjoins Block A, and it affords access to surface car parking spaces demised to some of the leaseholders of flats within Block A. This is consistent with one building rather than three.

(10) How the structures are serviced

Blocks A, B, C and E are all serviced via Back Beau Street. This is consistent with one building rather than three.

(11) The sharing of common facilities and amenities

Mr Howard states that Block B was built without any basement or plant room. This was because the basement under Blocks C and E was built to be utilised as the plant room for all of Blocks B, C and E. All the services were installed to accommodate all three blocks. There was one boiler installed to service all three blocks; there was one CCTV system installed to service all three blocks; the generators, substations, and service tanks were installed to service all three blocks. The three blocks were all painted the same colour, and they had the same features fitted. Structurally and aesthetically, there is nothing to differentiate Blocks, B, C and E. None of this applies to Block A. All of that suggests that they comprise two separate buildings. However Block A shares a single combined vehicular and pedestrian access from Fox Street. That points to one building rather than two.

(12) The planning history of the structures, and any enforcement action taken in relation to planning requirements and conditions

Mr Howard's understanding was that planning permission for the construction of Blocks B, C and E was granted at the same time. In fact, planning permission for Blocks A, B, C and D was granted at the same time (on 22 April 2015), with a separate planning permission for Block E being granted (on 20 December 2016) some 20 months later. When the local planning authority took enforcement action for alleged breach of planning control, a single enforcement notice was served in relation to all five blocks. Unsurprisingly, this gave rise to a single appeal, and a single decision of the planning inspector, quashing the enforcement notice for failing to specify with sufficient clarity the alleged breach of planning control, and the steps required for compliance. Liverpool City Council have also served a single planning contravention notice, dated 30 May 2024, asserting that the development of all five residential blocks A-E was not in accordance with the relevant planning permissions and planning application. This all points to there being only one building.

(13) The requirements of housing legislation and building and other applicable regulations, and the measures considered necessary to enforce compliance with them

Liverpool City Council served a single improvement notice, dated 6 June 2024, under section 11 of the Housing Act 2004 in relation to all four blocks, founded upon the existence of a Category 1 electrical hazard in the form of an unauthorised, unmetered electrical supply to all of the flats and common parts within Blocks A, B, C and E. On the same day, the City Council also served a single electricity improvement notice for all four blocks. This points to only one building. Earlier, however, the City Council had served two separate prohibition orders, dated 29 March and 17 April 2019, on

Block B and Blocks C and E. With the addition of Block A, that points to three buildings rather than one or two.

83. As I have foreshadowed (at [81] above), certain of these factors point in one direction whilst other factors point in another. I have tried to weigh all of them in the balance in what is essentially a multi-factorial evaluation exercise. I have acknowledged that in any individual case, a particular factor, or factors, may exert a magnetic attraction in favour of a certain conclusion. In the present case, the factor of magnetic attraction seems to me to be the shared use of Back Beau Street as the only means of access to the car parking spaces outside Blocks C and E, and possibly Block B, that have been demised to the leaseholders of flats in Unit A. Against that background, I can well understand the reticence on the part of the drafter of the plan attached to the section 5 offer notices in abjuring any attempt to parcel up the open spaces within the Fox Street Village development between the four different blocks.

84. In this connection, I note that, when contemplating (at [71] of his judgment in *Long Acre Securities v Karet*) the precise, albeit limited, circumstances in which Parliament must have intended the term *'building'*, as used in Part 1 of the 1987 Act, to include more than one structure, the deputy judge cited the example of two structures with a shared access, commenting that *"they might sensibly be regarded as one building for the purposes of the Act"*.

85. I appreciate that hitherto the focus of the authorities has been upon the rights of leaseholders of structures generally to access, and to make use of, appurtenant premises. However, I see no reason why the court should not afford equal weight to the rights of particular individual leaseholders to access, and make use of, appurtenant premises in the form of individual car parking spaces that have been demised to them. When this particular factor is added in with all the other factors that point to the existence of a single *'building'*, within the meaning, and for the purposes, of Part 1 of the 1987 Act, in my assessment and judgment it outweighs all countervailing factors and considerations.

86. For this reason, I therefore conclude that all four of Blocks A, B, C and E constituted a single *'building'*, within the meaning and for the purposes of Part 1 of the 1987 Act. In consequence, the section 5 offer notices served by the joint administrators of FSV on the qualifying tenants were not valid notices. This Part 8 claim for declaratory relief therefore falls to be dismissed.

Disposal

87. I therefore dismiss this claim for declaratory relief.

88. I propose formally to hand down this judgment remotely at 10.00 am on Wednesday 8 January 2025. No attendance is required. I invite the parties to seek to agree a substantive order to give effect to this judgment. This should include provision for the costs of this claim. If the parties cannot agree upon a suitable form of order, they should provide a draft composite order, together with brief written submissions on any outstanding consequential matters (including costs). These should be no longer than strictly necessary, and, in any event, no more than five pages in length. They should be submitted within 14 days after the formal hand-down of the court's judgment (i.e. by 4.00 pm on Wednesday 22 January 2025). Unless I direct otherwise,

I will proceed to determine any outstanding matters on paper, in furtherance of the overriding objective of saving costs, avoiding unnecessary delay, dealing with the matter proportionately, and having due regard to the efficient and effective use of the court's scarce resources.

89. I will extend the time for appealing to 42 days after formal hand down of this judgment (i.e. to 4.00 pm on Wednesday 19 February 2025). I direct that written submissions in support of any application for permission to appeal, with concise draft grounds of appeal, are to be filed and served within 14 days after formal hand down (i.e. by 4.00 pm on Wednesday 22 January 2025). Unless I direct otherwise, I will determine any such application on paper.

90. That concludes this reserved judgment.